

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA:

Cr.A.No.428 of 2000.

Date of Decision :13th September, 2007..

State of H.P.

...Appellant.

Versus:

Hem Chand.

...Respondent.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?¹

For the appellant: Mr.Ashok Chaudhary, Addl.
Advocate General.

For the respondent: Mr.Virbahadur Verma, Vice counsel.

Sanjay Karol, J (Oral).

The present appeal arises out of the judgment dated 10th August, 1999 passed in Criminal Case No. 33/2 of 1997 acquitting the respondent of the charge under Sections 341, 323, 354 and 506 of the Indian Penal Code.

On a written complaint (Ext.PA) dated 9th October, 1996, an F.I.R. No.217 of 1996 (Ext.PB) under Sections 341, 323 and 506 I.P.C. was registered with Police Station Sadar, Nahan against the accused person. The complaint was filed by Sh.Dharambir (PW-2), husband of Smt. Rajesh Rani (PW-3)

¹ Whether reporters of Local Papers may be allowed to see the judgment?

alleging that the accused intercepted PW-3 at in village, Surla , H.P. and not only used criminal force with intent to outrage her modesty but also assaulted her causing injury on her chest and knee. The Investigating Officer took into possession Danda (Ext.P-1) and the torn shirt (Ext.PJ). PW-3 was also medically examined at District Hospital, Nahan and her M.L.C. (Ext.PW-1/A) was also taken by the Investigating Officer.

After completion of the investigation, challan was presented in the Court and charges against the accused under Sections 341, 323, 354 and 506 I.P.C. were framed. The accused pleaded not guilty and claimed trial.

After examining the statements of six witnesses led by the prosecution, the statement of the accused under Section 313 Cr.P.C. was also recorded.

The court below found that the case of the prosecution was not proved as no independent witness was associated by the Police during the investigation of the case and the material witnesses, namely, Dharambir (PW-2), husband of the prosecutrix (PW-3) and Hitender Kumar (PW-4) brother-in-law of PW-3 were interested witnesses and in their depositions they had not only contradicted themselves but had also contradicted each other . Other two witnesses, namely, Pratibha Sood (PW-1) is the doctor who has proved the injury on the person of the complainant and Bhadur Singh (PW-5) is the Investigating Officer .

PWs.2,3 and 4 have admitted in their examination that the father of the accused has constructed a house adjoining to the land of PW-2 . They have also admitted that the complainant filed a private complaint against the accused person which is pending in the Court and another complaint was also filed in the Court of Sub Divisional Magistrate which was dropped. PW-4 has admitted that he is also a witness in all the aforesaid complaints. As per the version of PWs.2 and 3, it is clear that a common path where the offence took place is in the heart of the village and there are many houses belonging to other persons in close vicinity. Further, there is a Range Office adjoining to the place of occurrence. The incident has taken place in a broad day light. Why independent witnesses have not been associated by the prosecution has not been explained at all.

There is material contradiction in the statements of PWs.2 and 3. According to PW-3, F.I.R. was lodged by her whereas as per statement of PW-2 the F.I.R. was, in fact, lodged by him. Further, PW-2 has stated that it was PW-4 who had informed him that the accused had beaten up PW-3 and he along with PW-4 had gone to the place of occurrence where they found PW-3 lying on the spot. Whereas as per the version of PW-3 immediately after the occurrence, she went to her husband and reported the matter to him. The relations between

the parties were inimical and the statement of the witnesses do not inspire confidence and are not worthy of any credence.

I have gone through the entire material on record, carefully appreciated the evidence and came to the conclusion that the judgment of the trial court is well reasoned which is fully supported by the material on record and in my view, there is no perversity necessitating interference in an appeal against the acquittal.

The appeal is accordingly dismissed. The bail bonds are discharged.

**(Sanjay Karol),
Judge.**

September 13, 2007(R)